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City of Issaquah
Community Planning and Development

PROJECT: Hyla Crossing Pumped Stormwater Discharge Project, Issaquah, Washington

SUBJECT: **Shoreline Variance Justification**

To whom it may concern,

The following application is provided in support of a request for a shoreline variance for the Hyla Crossing Pumped Stormwater Discharge Project. The Project is guided not only by applicable local, state, and federal regulations, but by the Rowley Development Agreement (DA) dated from 2011. However, the DA does not address or modify shoreline regulations, therefore, the standard Issaquah regulations will apply as appropriate for land that falls within shoreline jurisdiction. Issaquah Municipal Code (IMC) 18.10.940 notes the adoption of the 2013 Shoreline Master Program (SMP, 2013) that has been referenced for this request.

The following details are provided below in this letter:

- Project Summary
- Applicable Shoreline Regulations
- Summary of Shoreline Variance Submittal Requirements (per City Memo, 22 April 2019)
- Shoreline Variance Requirements (SMP 8.2.5)

A full application has been provided to the City of Issaquah as part of the Administrative Site Development Permit (ASDP) application, the components of which will also apply to this shoreline variance request. A Shoreline Substantial Development Permit (SSDP) is required for utilities proposed within areas within the SMP. However, this Project proposes work on a City-owned property zoned as open space, which will require a shoreline variance to authorize the proposed work.

Previous and current documents relating to this Project that expand on project details relating to regulatory purview, Project design elements, critical areas assessment, alternatives analysis, among others, include the following:

- Rowley Development Agreement, 2012
- SEPA Decision No. SEP11-00005, 14 March 2012
- Final Environmental Impact State for Hyla Crossing and Rowley Center Project, November 2011
- Hyla Crossing Master Drainage Plan, 20 December 2011
- Final Environmental Conditions Report, Hyla Crossing – Wetland & Stream Study, The Watershed Company, 28 July 2010
- Critical Areas Report and Conceptual Mitigation Plan, Talasaea Consultants, 12 April 2021
- Hyla Crossing Pumped Stormwater Discharge Stormwater Technical Information Report, April 2020
- Civil Plans, KPFF, April 2021

1. Project Summary

The Project proposes to construct a new pipeline that will convey stormwater from a new pump station to a nearshore outfall adjacent to Lake Sammamish. Lake Sammamish is a shoreline of the state, as is the adjacent wetland (Wetland E) through which the pipeline corridor will pass. The shoreline environmental designation for Lake Sammamish where the new outfall is proposed is Lake Sammamish Urban Conservancy. The Urban Conservancy shoreline designation is intended to “protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses...” (SMP 2013). Utility use and development is an allowable use requiring a shoreline substantial development permit application. Lake shore buffers and setbacks do not apply to stormwater discharge/outfall facilities (Note 5, Table 2, Chapter 4.5 *Use and Standards Tables* of the SMP).

Minor permanent wetland impacts (805 square feet) will result from the proposed project that will be mitigated for through the purchase of credits from the Keller Farm Mitigation Bank. All temporary impacts to critical areas will be restored onsite. The Critical Areas Report prepared by Talasaea Consultants, dated 12 April 2021, details the project components relative to critical areas. This letter targets only those critical areas that fall within shoreline jurisdiction in the context of the proposed Project, including Lake Sammamish and Wetland E. A brief summary is provided below.

- Lake Sammamish is located adjacent to the Project. The new outfall will be located 10 feet landward of the lake ordinary high water mark (OHWM), consistent with Washington Department of Fish and Wildlife (WDFW) guidance. No work is proposed below the OHWM of Lake Sammamish. A round rock splash pad will extend to the upper limits of the OHWM to dissipate energy from the outfall structure.
- Wetland E is a large reed canarygrass-dominated wetland that is located adjacent to Lake Sammamish and extends south and east towards NW Sammamish Road. The delineation for Wetland E also extended over the roadside swale for NW Sammamish Road as these two (2) features are hydrologically connected. The entirety of Wetland E is assumed to fall under shoreline jurisdiction as portions of the wetland do occur within 200 feet of the Lake Sammamish OHWM. Permanent impacts to Wetland E are proposed for the construction of the new outfall (315 square feet) and recontouring of an existing pullout off NW Sammamish Road to facilitate periodic maintenance access in the future.

- No permanent maintenance road will be provided between the proposed pullout and the outfall. The pipeline corridor will be fully replanted with native species after installation. The over the pipe itself will be replanted with non-woody species to prevent direct interference of roots with the pipeline. The pullout will be used as a maintenance access point, however, for temporary access on an as-needed basis for required maintenance activities. Regular maintenance will be completed during the dry, summer months to the greatest extent practicable, and access to the outfall on-foot as much as feasible. Some maintenance activities may require vehicular access. Where that is the case, PRO-TEC Equipment Alternates, or equivalent, will be used to protect wetland soils from compaction. The short duration of access required for the periodic maintenance that will require that vehicles drive to the outfall should alleviate any potential for future temporary impacts. Access would be restricted to non-woody portions of the wetland, and is tentatively anticipated over the pipeline itself where woody vegetation will be restricted.

In addition to the above Project components, the Project will pass the Sammamish Cove property owned by the City, and the outfall will occur along the lake shoreline on this property. The Sammamish Cove property is zoned as Community Facilities – Open Space (CF-OS), which is intended for undeveloped public lands containing unimproved parks and critical areas. Section 18.06.090.E.1 of the Issaquah Municipal Code (IMC) notes that minor and major utilities may be located in this zone if no other reasonable alternative exists. The CF-OS zoning is intended for low impact, low intensity uses, which a stormwater outfall would be. The new utility from pump station to outfall has been designed consistent with IMC 18.07.480.D *Approval Criteria – Public Utility Facilities*.

2. Applicable Shoreline Regulations

A breakdown of the shoreline regulations as they pertain to the Project is provided below.

Water Quality

No stormwater treatment is included with this Project. Treatment of any storm water will be addressed on a Project-by-Project basis as the Hyla Crossing development is redeveloped over time, consistent with the DA.

Critical Areas, Environmental Protection and Shoreline Buffers

A discussion on avoidance and minimization of critical area impacts and how the Project meets IMC 18.10 is provided in the Critical Areas Report prepared by Talasaea Consultants, dated 12 April 2021.

Shoreline Vegetation

All permanent and temporary impacts to critical areas, including areas of shoreline vegetation, disturbed by this Project will be compensated for, either through the purchase of mitigation bank credits or onsite restoration. Any onsite restoration efforts will meet the standard requirements of the City of Issaquah for mitigation.

Flood Hazard Reduction

A more detailed discussion on the mapped 100-year floodplain is provided in the Critical Areas Report prepared by Talasaea Consultants, dated 12 April 2021. No impacts are anticipated to the 100-year flood elevation for Lake Sammamish as a result of this Project as the lake is ultimately managed by its connection to Puget Sound through Lake Washington and the Ballard locks.

Fill and Excavation

Fill and excavation are allowed in conjunction with permitted uses, including utility projects such as this one. This Project proposes permanent fill within Wetland E for the installation of the new outfall, while temporary wetland impacts will be required to open trench through Wetland E to install the new pipeline. The fill and excavation work proposed have been reduced to the minimum necessary to complete the proposed Project installation. The proposed work will not result in significant ecological damage, and the minor permanent impacts to Wetland E proposed will be fully mitigated for to compensate for the small loss.

Per 5.16.2 *Regulations* of the 2013 SMP, all filling and excavating within Wetland E, among other areas, will apply all standard best management practices for erosion and sediment control, as well as anticipating water management, as needed.

Section 5.16.2.5 of the SMP states that “*before the City can permit any filling and/or excavation activities, the applicant must demonstrate all of the following:*”

- a. *Alternatives to filling and excavation are infeasible;*

A discussion of the alternatives evaluated for this Project are outlined in the Critical Areas Report prepared by Talasaea Consultants, dated 12 April 2021.

- b. *Normal surface water movement and drainage patterns shall be maintained to the maximum extent feasible;*

The Project will have no affect on the natural drainage patterns through this large wetland. Periodic clay check dams are proposed along the pipeline to prevent the new pipeline from acting as a conduit that might allow water to move too quickly through the system.

c. *Fill materials shall not adversely affect water quality of aquatic life;*

Fill materials used will include the structural components of the outfall itself, as well as the rock pad that will extend from the outfall to the shoreline itself. All construction materials used will be sourced from clean fill material that is suitable for placement within a critical area that will not adversely affect water quality. Therefore, no impacts to aquatic life are anticipated. Construction best management practices will be used for site preparation, construction site isolation, dewatering measures, and erosion and sediment control measures to ensure no temporary impacts to aquatic life will occur from the construction activities.

d. *Fill shall allow surface water penetration into the ground where such conditions existed prior to the fill; The filling and/or excavation shall be timed to minimize damage to shoreline ecological functions and processes and aquatic life; and*

While surface water movement into the ground will be limited where the outfall itself is located, water in this area tends to move towards Lake Sammamish and the outfall will not create an impediment to general flow and water movement either above or below ground. Construction activities will be completed within the drier summer months to the greatest extent feasible.

e. *Fill within the one hundred-year (100-year) floodplain shall not reduce the floodplain water storage capacity, inhibit channel migration, or in any way increase flood hazard or endanger public safety.*

A more detailed discussion on the mapped 100-year floodplain is provided in the Critical Areas Report prepared by Talasaea Consultants, dated 12 April 2021. The proposed pullout modification is above the 100-year flood elevation for the lake. The outfall is proposed to be constructed below the 100-year flood elevation, but no effect on the 100-year flood elevation for Lake Sammamish is anticipated because the lake is ultimately managed by its connection to Puget Sound through Lake Washington and the Ballard locks.

No channel migration zone is present at this location.

3. Summary of Shoreline Variance Submittal Requirements (per City Memo, 22 April 2019)

Consistent with the 22 April 2019 City memo regarding Shoreline Variance Submittal Requirements, the below responses to address the variance justification are below.

The intent of a variance is to provide relief from certain elements of the shoreline regulations where extraordinary or unique circumstances exist on a site where standard application of the Shoreline Master Program (SMP) would impose unnecessary hardships. This Project requests a variance from the SMP to accommodate the proposed utility as it crosses a City property zoned as CF-OS. The variance justification used is #2 for development located either waterward of the OHWM OR within wetlands as the proposed structure will be placed within a wetland landward of the OHWM of Lake Sammamish.

2. *Variance permits for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within marshes, bogs, or swamps as designated by the department pursuant to Chapter 173-22 WAC, may be waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within marshes, bogs, or swamps as designated by the department pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:*
 - a. *That the strict application of the bulk, dimensional or performance standards set forth in the Shoreline Master Program precludes a reasonable use of the property not otherwise prohibited by the Shoreline Master Program.*

The Project proposes an outfall directly to Lake Sammamish in order to bypass Tibbetts Creek from certain ranges of stormwater releases from the Hyla Crossing development. The intent of the outfall is to manage future stormwater as the Hyla Crossing collective properties are redevelopment. The Property through which this pipeline will pass, and on which the outfall will be located, requires a shoreline variance based on the zoning of the Sammamish Cove property.

Previous studies evaluated a more environmentally impactful option to construct an in-water outfall that would extend out into Lake Sammamish. However, since those studies were complete in 2011 through a City-issued SEPA decision supporting the in-water outfall, best available science shifted. During a joint Agency meeting held in 2019, a combination of feedback from the Muckleshoot Tribe, Washington State Department of Fish and Wildlife (WDFW), and the US Army Corps of Engineers established that none of those entities could support an outfall that was below the OHWM of Lake Sammamish for a variety of reasons. It was determined that an outfall outside of the OHWM was the best, less impactful solution.

With the guidance provided to evaluate options for an outfall outside of the lake OHWM, the potential for a dispersion trench at the upper limits of Wetland E was evaluated. A dispersion trench at the upper limits of Wetland E would have reduced the direct impacts to Wetland E. However, the Washington Department of Ecology (DOE) noted that their stormwater manual would make permitting a dispersion trench through a wetland in this fashion very challenging.

By incorporating the DOE guidance, in conjunction with the other state and federal guidance, it was determined that an outfall located 10 feet landward of the lake OHWM would be the best solution. An outfall at this location requires the pipeline cross Wetland E and the Sammamish Cove property. This solution requires access to the Sammamish Cove property as this is the only City-owned access to the lake in this area. The installation of the pipeline across and the permanent outfall on the Sammamish Cove property will not interfere with the standard uses of the property for public recreation through the onsite pedestrian trails or the critical areas already onsite. While the City is in the process of several habitat restoration projects on this Property, the proposed Project will not hinder these restoration efforts, but will contribute towards that same goal through the onsite mitigation proposed to restore areas of temporary wetland or buffer impact.

- b. *That the hardship described in (2a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;*

The hardship requiring the variance is specifically tied to the zoning of the City owned property, and is not related to any action of the Applicant.

- c. *That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or to the shoreline environment designations.*

The Project is compatible with other authorized uses in the area, primarily as a critical area and as a pedestrian trail that is located through Wetland E. The pipeline will not restrict the wetland functions, nor will the pipeline impede public usage of the existing trail system, except for a short time during construction since the pipeline does cross the pedestrian trail.

- d. *That the requested variance will not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.*

The variance requested is not a special privilege, but access to the lake for a public utility that will benefit the City and its residents. The other properties in the area have different zoning, so the Sammamish Cove property is unique with its zoning in this specific part of the City.

This Project has been evaluated on a number of occasions, including during the SEPA process in 2011 and prior that resulted in the issued Environmental Impact Statement for this Project, as well as more recently in preparation of this application. The Project has been redesigned and modified numerous times to assure that the Project is the minimum necessary to achieve the Project while meeting all required local, state, and federal regulations.

- e. *That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.*

No navigation will be affected by the Project, nor will public use of the shoreline at this location be adversely affected since no public access is encouraged at the location of the Project.

4. Shoreline Variance Requirements (SMP 8.2.5)

The intent of a variance is to provide relief from certain elements of the shoreline regulations where extraordinary or unique circumstances exist on a site where standard application of the Shoreline Master Program (SMP) would impose unnecessary hardships. This Project requests a variance from the SMP to accommodate the proposed utility as it crosses a City property zoned as CF-OS.

Section 8.2.5 of the SMP outlines the requirements to be granted a variance. Each item in Section 8.2.5.6 is discussed in detail below:

6. *A variance from the standards of the master program may be granted only when the applicant can demonstrate that all the following conditions will apply:*

- a. *That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;*

The Project proposes an outfall directly to Lake Sammamish in order to bypass Tibbetts Creek from certain ranges of stormwater releases from the Hyla Crossing development. The intent of the outfall is to manage future stormwater as the Hyla Crossing collective properties are redevelopment. The Property through which this pipeline will pass, and on which the outfall will be located, requires a shoreline variance based on the zoning of the Sammamish Cove property.

Previous studies evaluated a more environmentally impactful option to construct an in-water outfall that would extend out into Lake Sammamish. However, since those studies were complete in 2011 through a City-issued SEPA decision supporting the in-water outfall, best available science shifted. During a joint Agency meeting held in 2019, a combination of feedback from the Muckleshoot Tribe, Washington State Department of Fish and Wildlife (WDFW), and the US Army Corps of Engineers established that none of those entities could support an outfall that was below the OHWM of Lake Sammamish for a variety of reasons. It was determined that an outfall outside of the OHWM was the best, less impactful solution.

With the guidance provided to evaluate options for an outfall outside of the lake OHWM, the potential for a dispersion trench at the upper limits of Wetland E was evaluated. A dispersion trench at the upper limits of Wetland E would have reduced the direct impacts to Wetland E. However, the Washington Department of Ecology (DOE) noted that their stormwater manual would make permitting a dispersion trench through a wetland in this fashion very challenging.

By incorporating the DOE guidance, in conjunction with the other state and federal guidance, it was determined that an outfall located 10 feet landward of the lake OHWM would be the best solution. An outfall at this location requires the pipeline cross Wetland E and the Sammamish Cove property. This solution requires access to the Sammamish Cove property as this is the only City-owned access to the lake in this area. The installation of the pipeline across and the permanent outfall on the Sammamish Cove property will not interfere with the standard uses of the property for public recreation through the onsite pedestrian trails or the critical areas already onsite. While the City is in the process of several habitat

restoration projects on this Property, the proposed Project will not hinder these restoration efforts, but will contribute towards that same goal through the onsite mitigation proposed to restore areas of temporary wetland or buffer impact.

- b. *That the hardship described in (1) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;*

The hardship requiring the variance is specifically tied to the zoning of the City owned property, and is not related to any action of the Applicant.

- c. *That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;*

The Project is compatible with other authorized uses in the area, primarily as a critical area and as a pedestrian trail that is located through Wetland E. The pipeline will not restrict the wetland functions, nor will the pipeline impede public usage of the existing trail system, except for a short time during construction since the pipeline does cross the pedestrian trail.

- d. *That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;*

The variance requested is not a special privilege, but access to the lake for a public utility that will benefit the City and its residents. The other properties in the area have different zoning, so the Sammamish Cove property is unique with its zoning in this specific part of the City.

- e. *That the variance requested is the minimum necessary to afford relief;*

This Project has been evaluated on a number of occasions, including during the SEPA process in 2011 and prior that resulted in the issued Environmental Impact Statement for this Project, as well as more recently in preparation of this application. The Project has been redesigned and modified numerous times to assure that the Project is the minimum necessary to achieve the Project while meeting all required local, state, and federal regulations.

- f. *That the public interest will suffer no substantial detrimental effect; and*

The proposed pipeline and outfall will ultimately be a net benefit to the public as it will ensure improved handling of future stormwater flows to Lake Sammamish.

- g. *That the public rights of navigation and use of the shorelines will not be adversely affected*

No navigation will be affected by the Project, nor will public use of the shoreline at this location be adversely affected since no public access is encouraged at the location of the Project.

- h. *That consideration has been given to the cumulative effect of like actions in an area where similar circumstances exist, and whether this cumulative effect would be consistent with shoreline policies or would have substantial adverse effects on the shoreline.*

The proposed Project is a pipeline and new outfall to Lake Sammamish that is intended to relieve Tibbetts Creek by routing certain targeted flows directly into the lake and bypassing Tibbetts Creek. Shoreline outfalls are an allowable use within this designated shoreline environment. However, the Sammamish Cove property's zoning is what is triggering the variance, though a utility is a compatible use with a designated open space.

Should you have any questions or require additional information regarding this Project, please contact Chris Borzio at KPFF or me at jen@wet.land (cell: 813-846-1684).



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